

REMARKS

Applicant's representative thanks Examiner Woo for the courtesy of the telephone interview conducted December 7, 2006. A summary of the interview is incorporated into the remarks below.

Allowable claims 60, 85, and 88 have been rewritten in independent form as new claims 89-91.

The Examiner has rejected independent claims 55, 66, and 81 as anticipated by Bokros. The applicant has amended each of these claims to recite that the member and the head are generally rigid, and submits that there is no description or suggestion in Bokros that the soft-tissue affixation means 16, which the examiner equates to the claimed member, is generally rigid. Rather, while it is not entirely clear what part of the Bokros device is being referred to, apparently, at col. 5, lines 58-62, Bokros describes the affixation means 16 as being a porous mesh material of Dacron. During the interview, the Examiner raised a concern that he considers the term "rigid" to be a relative term, and thus a porous mesh material of Dacron could be considered as rigid. The applicant respectfully disagrees. "Rigid" has a settled definition of not flexible or pliant; stiff. See Merriam Webster's Collegiate Dictionary, Tenth Edition, © 1996. For "rigid" to be used in a relative context, a modifier, such as "more" rigid, must accompany the term.

Therefore, for at least this reason, claims 55, 66, and 81 are patentable over Bokros.

The Examiner has also rejected claim 55 as anticipated by Homsy. As with Bokros, there is no description or suggestion in Homsy that the films 14, which the examiner equates to the claimed member and head, are generally rigid.

Therefore, for at least this reason, claim 55 is patentable over Homsy.

The Examiner has rejected independent claims 55 and 81 as anticipated by Hausner.

During the interview, the distinction between the low profile of the applicant's disclosed head and the profile of Hausner's end members 14 and 20 were discussed. In amending claim 55 to claim this distinction, the Examiner recommended that the longitudinal axis of the fastener be defined in such a way that the claim language would not read on the artificial tendon of Hausner

if the end members 14 and 20 were moved up or down out of the plane of the paper in the Hausner figures. The applicant has amended claim 55 to recite that the tissue fastener has a longitudinal axis extending along a maximum possible length from an outer end of the member to an outer end of the head. Thus, as illustrated in the flat orientation of the Hausner figures, the corresponding longitudinal axis of the Hausner artificial tendon extends from the left most terminal end of the artificial tendon to the right most terminal end. Even if the end members were moved up or down out of the plane of the paper, with the claimed longitudinal axis extending along the maximum possible length, the longitudinal axis of the Hausner artificial ligament would still have to extend from one terminal end to the other. By further reciting in claim 55 that the head has a maximum longitudinal cross-sectional length along the longitudinal axis shorter than the maximum transverse cross-sectional length, the applicant has distinguished the end members of Hausner, which are not shorter longitudinally than they are transversely.

The applicant has amended claim 81 to recite that the interior passage is along an entire length of the shaft. The passages in Hausner formed by the loops 12 at the ends of strip 10 are not along an entire length of the strip 10.

Therefore, for at least these reasons, claims 55 and 81 are patentable over Hausner.

The applicant does not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, however, applicants may have not addressed all characterizations of the art and reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by the applicant to any of the examiner's positions does not constitute a concession of the examiner's positions. The fact that applicant's comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

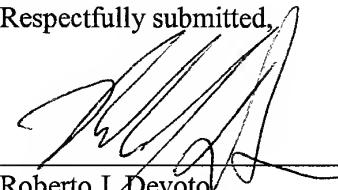
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